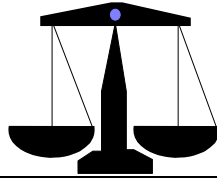


**Department of Health and Human Services**  
***Employee Relations***



**Common Questions & Answers**

**UNLAWFUL WORKPLACE HARASSMENT COMPLAINTS AND CONCERNS**

***Prepared By: Wanda Allen-Abraha***

**I. LAW AND POLICY**

**1. What is discrimination?**

- Discrimination is defined by both federal and state law. Within the parameters of employment law, discrimination is a broad and encompassing descriptor of the unlawful treatment of persons within the protected classes proscribed by federal law, specifically Title VII.

**2. What is Title VII? What does Title VII have to do with our investigative process?**

- Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000e *et seq.*, is the federal law that prohibits discrimination. It prohibits discrimination in employment that is based on race, color, sex (including pregnancy), national origin, and religion. Title VII is mirrored in state laws and policies; therefore, we are legally obligated to ensure that such unlawful employment practices are prevented or corrected.

**3. What is the state law regarding discrimination?**

- Per the State Personnel Manual:
  - "It is the policy of the State of North Carolina that neither race, religion, color, creed, national origin, sex, age, political affiliation, nor handicapping condition is to be considered in the:
    - Recruitment and selection of new employees of the state
    - Selection of employees for promotion, training, career development, transfer,

demotion...and/or  
reduction-in-force,

- Administration of disciplinary policies or termination for cause, and
- Establishment of rates of pay including the awarding of salary adjustments and/or annual salary increases."

#### **4. What is DHHS' policy regarding discrimination?**

- DHHS' policy on discrimination is reflective of state law and is included within each individual agency or division's Unlawful Workplace Harassment Policy. This policy can be found in the EEO Plan for DHHS in addition to the EEO Plan for each individual agency or division within DHHS.

#### **5. What is the Unlawful Workplace Harassment Policy and what does it cover?**

- The Unlawful Workplace Harassment Policy prohibits unwelcome or unsolicited speech or conduct based on race, creed, color, national origin, sex, religion, age, or handicapping condition as defined by N.C. General Statute 168A-3 that creates a hostile work environment or circumstances involving quid pro quo. More specific information regarding the Unlawful Workplace Harassment may be found in the State Personnel Manual.

#### **6. What is the EEOC?**

- The Equal Employment Opportunity Commission (EEOC) is a federal agency established by Congress to enforce laws that prohibit job discrimination by private employers and state and local government agencies. The EEOC enforces Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended (ADEA); The Equal Pay Act of 1963, as amended (EPA); Title I of the Americans with Disabilities Act of 1990, as amended (ADA); and the Civil Rights Act of 1991 (CRA), which amended provisions of Title VII, the ADEA and the ADA. In addition, it enforces The Pregnancy Discrimination Act of 1978, which is an amendment to Title VII.

## **II. THE COMPLAINT**

#### **7. How much information is necessary from a complainant in order to file a discrimination complaint?**

- A complainant should put his or her concerns in writing as soon as possible. The basis for the alleged discrimination should be contained within the written complaint. In addition, the complainant should include names, dates and other details of specific instances of the alleged discrimination. Also, the

complainant should specify the remedy that he or she seeks as a result of the alleged discrimination. The complainant should sign and date the complaint.

**8. Is it necessary to investigate all discrimination complaints?**

- Yes; it is a good idea to investigate all discrimination complaints. The scope of the investigation is dependent upon the nature and extent of each individual complaint. Local management should decide upon the scope of the investigation.

**9. Is there a deadline for filing a discrimination complaint?**

- The deadline for filing a discrimination complaint depends on the type of complaint that is being filed. For instance, an EEOC charge must be filed with the EEOC or OAH within 300 calendar days from the date of the discriminatory act. For a formal grievance, the complaint must be filed within 15 days from the date of the alleged discriminatory act. For other unlawful workplace harassment complaints, the complaint must be filed within 30 days from the date of the alleged discriminatory act. For internal discrimination complaints that are neither formal grievances, nor unlawful workplace harassment complaints, the complaint should be filed within a reasonable timeframe from the date of the discriminatory act.

**10. With whom should discrimination complaints be filed?**

- Internal discrimination complaints should be filed with the Human Resource office. EEOC charges should be filed with the EEOC. Employees should consult with an EEOC representative for details concerning the proper filing requirements.

**11. What is the difference between filing a discrimination complaint and filing an EEOC charge?**

- Employees have a right to file a discrimination complaint within DHHS. Such a complaint will be investigated using the grievance procedure, if applicable, or an informal investigation procedure.
- Employees have a right to file charges with the EEOC regarding alleged discrimination and the EEOC may defer a charge to the Office of Administrative Hearings- Civil Rights Division (OAH) for investigation . Employees may opt to file an EEOC charge with the OAH, who may defer the charges to EEOC, if OAH determines that it does not have subject matter jurisdiction.

**12. What is the difference between filing a discrimination complaint and filing a grievance?**

- A discrimination complaint is investigated using an internal investigation process that does not include the grievance procedure. This informal process is used when an employee's allegations do not rise to the level of a grievable

issue. A grievance is a complaint that can be addressed and remedied through the formal grievance procedures. The issues brought forth by the employee/grievant may or may not be discrimination based. In order for a grievance to be filed, the grievant must have suffered a tangible, adverse personnel action.

**13. Are we obligated to investigate sexual harassment complaints?**

- Yes; we are legally obligated to investigate all sexual harassment complaints.

**14. What if the employee just wants to make someone aware of the sexual harassment and requests for no action to be taken?**

- Employees should be informed that management cannot guarantee that no investigation or action will ensue due to the reporting of the alleged sexual harassment. It should be explained to employees that DHHS has a legal obligation to protect its employees and to treat sexual harassment allegations very seriously.

**15. Should management delay responding to the complainant or respondent regarding meetings, correspondence, or deadline expectations when the complainant or respondent is absent on medical leave?**

- It is within the discretion of the local management as to whether deadlines will be extended and meetings rescheduled due to a complainant or respondent's medical absence. Typically, some type of documentation is recommended from a physician which excuses the employee from work.

**16. Should the respondent's supervisor be made aware of the complaint?**

- Yes; the respondent's supervisor should be made aware of the nature of the complaint. The respondent's supervisor should also be kept informed of the progress of the investigation based on the supervisor's need to know.

**17. Should management acknowledge in writing the receipt of the complaint?**

- Yes; management should formally acknowledge, in writing, the receipt of the complaint. The acknowledgement should also state that the complaint has been taken seriously and will be investigated.

**18. Are there alternatives to filing a formal internal discrimination complaint?**

- Yes; for non-sexual harassment complaints, an employee may opt to mediate his concerns with the help of his or her supervisors and human resource office. Generally, depending on the nature and severity of the complaint, sexual harassment complaints must be investigated.

**19. Can a manager hold a complaint for an indefinite period of time if the complainant is indecisive?**

- Generally, it is not a good idea for a manager to hold a complaint for an indefinite period of time if the complainant is indecisive. Employees should be encouraged to submit their concerns in writing as soon as possible with the understanding that the appropriate personnel action will be taken.

### **III. THE INVESTIGATION**

**20. Can employees be reassured that discrimination complaints and investigations will be kept confidential?**

- Employees can be reassured that discrimination complaints and investigations will only be shared with those who have a need to know. These persons will include those who are within the chain of command of an employee's local agency or division. Those within the "need-to-know" category will be admonished to keep the details of the complaint and investigation confidential.

**21. Who is responsible for leading an investigation for discrimination complaints?**

- Each agency or division's management team assembles a management investigation team to look into allegations of discrimination. Typically, a manager, Employee Relations Specialist, EEO Designee, or Human Resource Representative leads such investigations.

**22. Who should initiate the investigation when the respondent is an employee in another division or agency?**

- When the respondent is an employee of another division or agency, the manager, Employee Relations Specialist, human resource office, or EEO Designee of the complainant's division or agency should initiate the investigation in cooperation with the appropriate and necessary persons of the other division or agency (including witnesses, managers, etc.).

**23. What are the steps that should be taken for investigating a discrimination complaint once it is received?**

- Once a written discrimination complaint is received by a manager, human resource representative, Employee Relations Specialist, or EEO Designee:
  1. The complaint should be reviewed to determine whether the complainant has a grievable issue that can be addressed by the grievance procedures.
  2. If the complaint is non-grievable, the complaint should be reviewed to ensure that all of the necessary information (such as the nature of the

complaint, the basis of the complaint, the names of witnesses, dates, and locations) is included.

3. Members of management with a need-to-know, particularly the agency or division director, should be informed of the complaint.
4. Management should acknowledge, in writing, the receipt of the complaint (see number 8, above).
5. A management investigation team should be assembled.
6. Applicable laws, statutes, and policies that are at issue should be referenced and made available for the members of the investigation team to review and understand.
7. The management investigation team should formulate questions and a schedule for interviewing the complainant, respondent and witnesses.
8. A neutral, inconspicuous location should be chosen for the interviewing of those involved in the investigation.
9. The complainant, respondent and witnesses should be contacted and interviews scheduled.
10. Follow-up questions should be asked of all persons interviewed. Specifically, witnesses should be asked for the names of others who may have direct knowledge of the allegations.
11. At the conclusion of all interviews, the investigation team should discuss the merits of the complaint and whether the allegations were substantiated.
12. The investigation team should agree on a recommendation to the agency or division director regarding any disciplinary action.
13. An investigative report, including all relevant documents, records and interview notes, should be assembled for review by the agency or division director.
14. The agency or division director should issue a letter to the complainant and respondent stating the final decision and the reason(s) for it. Also, the letter should describe appeal rights.
15. The investigation report should be secured in a confidential file in the human resource office. Any disciplinary letters should be placed in the appropriate personnel file.

#### **24. How long should a discrimination investigation take and are there any timelines involved?**

- Due to the general sensitivity of discrimination complaints, discrimination investigations should take place as expediently as possible.

**25. Who will decide whether the allegations were substantiated and the disciplinary action, if any?**

- For internal discrimination complaints, the management investigation team may recommend to the agency or division director whether the allegations were substantiated and the recommended disciplinary action, if any. The agency or division director will make the final determination regarding whether the allegations were substantiated and any necessary disciplinary action.

**26. Who will be permitted to read the investigative report?**

- Only those with a need to know and final decision-making authority will be privy to the investigative report.

**27. Where will the investigative report be kept?**

- The investigative report will be kept in a confidential file in a secure location within the local human resource office.

**28. Will a copy of the report or information contained in the report be placed into anyone's personnel file?**

- No; a copy of the report will not go into anyone's personnel file. If disciplinary action is merited as a result of the investigation, documentation regarding the discipline will be placed in the appropriate person's(s') personnel file.

**29. Who will be notified of the outcome of the investigation?**

- The complainant and respondent will be notified of the outcome of the investigation. If the complaint develops into a lawsuit, witnesses will be apprised of the necessary information pertaining to the allegations.

**30. Will the complainant know the action or discipline, if any, that is administered against the respondent?**

- No; the complainant will not be informed of the action or discipline, if any, that is administered against the respondent. Any disciplinary action that is taken against the respondent is deemed a confidential personnel matter that is not disclosable.

**31. Is there an appeal process?**

- Yes; if the complainant does not agree with the findings of an internal investigation, he or she may choose to file a timely EEOC charge or a private lawsuit. If the complainant is not pleased with the EEOC's findings, he or she may bring a private lawsuit against the employer in Federal District Court within 90 days from the receipt of the determination letter from EEOC.

#### IV. DISCRIMINATION-BASED CONCERNS

**32. When is requiring an employee or applicant not to have a disability or handicapping condition not considered discriminatory?**

- Per the EEO Policy in the State Personnel Manual, an agency may be exempt from discriminatory requirements concerning employees or applicants who have a disability or handicapping condition under certain circumstances. Requiring an employee or applicant not to have a disability or handicapping condition is not considered discriminatory when the requirement is a bona fide occupational qualification. The burden falls on the hiring agency to prove that the requirement is justified and necessary for the specific work to be performed by the position. See the State Personnel Manual.

**33. Is it discriminatory to ask an employee to return to work or risk being separated once the employee's FMLA leave has been exhausted?**

- No; it is within the discretion of management to grant or not to grant an employee further leave without pay once FMLA leave has been exhausted. If management decides to grant the employee further leave without pay, the employee should be required to formally request the leave and provide medical documentation to justify it. If the employee provides the medical documentation to warrant an extended leave, the employee should be informed of the option of applying for short-term disability.

If the employee does not provide medical documentation to justify further leave without pay, and management decides not to grant the employee further leave and the employee does not have further paid leave to which he or she is entitled, management can instruct the employee to return to work. If the employee refuses or is medically unable to return to work, management can take disciplinary action and dismiss the employee or take a non-disciplinary approach and separate the employee due to the unavailability for work. See the State Personnel Manual for further details.

**34. What if an employee's appearance, such as body piercings and tattoos, is the basis for alleged discriminatory treatment?**

- A complaint regarding alleged discriminatory treatment based on appearance, such as body piercing and tattoos, should not be categorized as a complaint based on discrimination. Per state law, discriminatory treatment must be based on race, color, creed, national origin, sex, age, or disability. Such a complaint should be treated as any other non-discrimination-based complaint.



**35. What if an employee is alleging discrimination based on a sex/gender change?**

- An employee who alleges discriminatory treatment based on a sex/gender change has a basis for a discrimination complaint based on sex, if the sex/gender change can be medically and legally verified.

**36. What if someone retaliates against someone for filing a complaint or for participating in the investigation?**

- Retaliation, as defined by the State Personnel Manual, is adverse treatment which occurs because of opposition to unlawful workplace harassment. Retaliation for the filing of or participation in a discrimination investigation is illegal. Retaliation is prohibited by all federal and state laws as well as the Office of State Personnel's and DHHS' Unlawful Workplace Harassment policies.